

**ENFORCEMENT OF CONTROLLED SUBSTANCE****LAWS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David L. Hogue**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill modifies Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, by amending the regulation of retail sales of products used to make methamphetamine.

**Highlighted Provisions:**

This bill:

- ▶ regulates the sale of products containing ephedrine and pseudoephedrine;
- ▶ requires a retail distributor to:
  - request that purchasers provide photo identification;
  - keep a written or electronic list of transactions documenting:
    - name of purchaser;
    - date of transaction; and
    - name and amount of product purchased;
  - report transactions of products containing ephedrine and pseudoephedrine;
  - display or store the product in a locked case or in an area not accessible to customers;
- ▶ restricts the purchaser to:
  - no more than 3.6 grams of product per day; and
  - a total of no more than 9 grams of product in any 30-day period;
- ▶ makes exceptions for:



- prescription medications; and
- products formulated to effectively prevent the conversion of the active ingredient into methamphetamine, including liquid, gel caps, and pediatric forms of ephedrine or pseudoephedrine; and
- provides a class B misdemeanor penalty for violations.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**58-37c-8**, as last amended by Chapter 271, Laws of Utah 2000

**58-37c-10**, as repealed and reenacted by Chapter 155, Laws of Utah 1992

**58-37c-20**, as last amended by Chapter 1, Laws of Utah 2000

**ENACTS:**

**58-37c-20.1**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **58-37c-8** is amended to read:

**58-37c-8. License -- Exceptions from licensure or regulation.**

(1) Any person engaged in a regulated transaction must be appropriately licensed under this chapter as a regulated distributor and regulated purchaser unless excepted from licensure under this chapter.

(2) The division shall:

(a) establish the form of application for a license, the requirements for licensure, and fees for initial licensure and renewal; and

(b) identify required information to be contained in the application as a condition of licensure.

(3) A practitioner who holds a Utah Controlled Substance License and a Controlled Substance Registration issued by the Drug Enforcement Administration of the U.S. Government is excepted from licensure under this chapter.

(4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains [~~ephedrine, pseudoephedrine,~~] norpseudoephedrine[;] or phenylpropanolamine if [~~such~~] the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription pursuant to the federal Food, Drug and Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted thereunder are excepted from licensure, reporting, and recordkeeping under this chapter.

(5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise prohibited by law, which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.

(6) A purchaser of two ounces or less of crystal iodine in a single transaction is not required to be licensed as a regulated purchaser if the transaction complies with Section 58-37c-18.

(7) Any purchase, sale, transfer, receipt, or manufacture of any product that contains any precursor chemical listed in Subsection 58-37c-3(2)(ff) or (gg) and that is not intended for human consumption is exempt from licensure, regulation, or criminal penalties under this chapter.

Section 2. Section **58-37c-10** is amended to read:

**58-37c-10. Reporting and recordkeeping.**

(1) Any person who engages in a regulated transaction[;] or a transaction under Section 58-37c-20.1, unless excepted under the provisions of Subsections 58-37c-8 (3) and (4), shall submit a report with respect to [~~such~~] the transaction and shall maintain records of inventories in accordance with rules adopted by the division.

(2) The division shall provide reporting forms upon which regulated transactions shall be reported.

(3) The division shall furnish copies of reports of transactions under this section to appropriate law enforcement agencies.

(4) The division shall adopt rules regulating:

(a) records which shall be maintained and reports which shall be submitted by

regulated distributors and regulated purchasers with respect to listed controlled substance precursors obtained, distributed, and held in inventory;

(b) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to extraordinary or unusual regulated transactions and a requirement that in ~~[such]~~ these cases the report must be received at least three working days prior to transfer of the listed controlled substance precursor;

(c) identification which must be presented by a purchaser of any listed controlled substance precursor before the sale or transfer can be completed and recordkeeping requirements related to ~~[such]~~ the identification presented;

(d) filing by each licensee the identification of all locations where any listed controlled substance precursor is held in inventory or stored and amending ~~[such]~~ the filing when any change in location is made;

(e) reports and actions which must be taken by a regulated distributor or regulated purchaser in the event of any theft, loss, or shortage of a listed controlled substance precursor;

(f) reports and actions which must be taken by a regulated distributor relating to a regulated transaction with an out-of-state purchaser;

(g) reports and actions which must be taken by a regulated purchaser relating to a regulated transaction with an out-of-state distributor; and

(h) regulated transactions to the extent ~~[such]~~ the regulation is reasonable and necessary to protect the public health, safety, or welfare.

Section 3. Section **58-37c-20** is amended to read:

**58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.**

(1) Any person who is not licensed to engage in regulated transactions and not excepted from licensure who, under circumstances not amounting to a violation of Subsection 58-37c-3(12)(k) or Subsection 58-37d-4(1)(a), possesses more than ~~[12]~~ 9 grams of ephedrine or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these substances, is guilty of a class A misdemeanor.

(2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in possession of ephedrine or pseudoephedrine, or a combination of these two substances:

(i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons; and

(ii) possesses the substances in the regular course of lawful business activities.

(b) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than ten days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(ii) The notice shall include the specifics of the asserted defense.

(iii) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(3) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:

(a) are not otherwise prohibited by law; and

(b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:

(i) are contained in a matrix of organic material; and

(ii) do not exceed 15% of the total weight of the natural product.

Section 4. Section **58-37c-20.1** is enacted to read:

**58-37c-20.1. Pseudoephedrine products -- Limitations on retail sale.**

(1) Any retail distributor who sells any product, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers, or a combination of any of these substances to another person shall:

(a) store the product in an area not accessible to customers before the sale is made, which may include a locked cabinet to display the product in an area accessible to customers, if the locked cabinet may only be opened by the retail distributor or its employees;

(b) require the purchaser to produce photo identification issued by a governmental agency that includes the purchaser's date of birth; and

(c) maintain, in accordance with Section 58-37c-10, a written or electronic list of the sales under this section, documenting:

(i) name of the purchaser;

(ii) date of the transaction; and

(iii) name and amount of the product purchased.

152           (2) Notwithstanding the number of transactions, a person may not purchase more than  
153   3.6 grams of any product or any combination of products containing ephedrine or  
154   pseudoephedrine in a 24-hour period.

155           (3) A person may not purchase, receive, or otherwise acquire a total of more than 9  
156   grams of any product or any combination of products containing ephedrine or pseudoephedrine  
157   within any 30-day period.

158           (4) Subsection (2) does not apply to any quantity of a product containing ephedrine or  
159   pseudoephedrine dispensed under a valid prescription.

160           (5) This section does not apply to products formulated to effectively prevent the  
161   conversion of the active ingredient into methamphetamine, including liquid, gel caps, and  
162   pediatric forms of ephedrine or pseudoephedrine.

163           (6) Any violation of this Section is a class B misdemeanor.

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**Legislative Review Note**

**as of 2-2-06 10:55 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**State Impact**

Provisions of this bill will increase state revenues by \$1,600,000 in FY 2007 and \$880,000 in FY 2009 and every two years thereafter in renewal fees. The Division of Occupational and Professional Licensing (DOPL) will require an appropriation of \$465,800 from the Commerce Service Fund in FY 2007 and \$296,300 beginning in FY 2008 and each fiscal year thereafter. The division will require 4 additional FTEs to implement provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
Commerce Service Fund	\$465,800	\$296,300	\$1,600,000	\$0
<b>TOTAL</b>	<b>\$465,800</b>	<b>\$296,300</b>	<b>\$1,600,000</b>	<b>\$0</b>

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**Individual and Business Impact**

Retail distributors in the state will be required to become licensed at a cost of \$210 for distributor licenses and \$110 for purchaser licenses. Distributors and purchasers will also be required to maintain and report transactions records to the division and make store space modifications to adhere to provisions of the bill.

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**Office of the Legislative Fiscal Analyst**